

bear the financial cost of DNA testing. Nor will there be any cost to the State, as the timely entry of a preliminary injunction will not alter Plaintiff's scheduled February 24, 2010 execution date.

For the reasons set for in the Brief, Plaintiff respectfully requests of this Court a preliminary injunction declaring that Defendant's continued withholding of the evidence violates his constitutional rights and requiring Defendant to release the evidence enumerated in the Complaint's Prayer for Relief to Mr. Skinner in order that such evidence can be subjected to forensic DNA testing. Attached to this motion is a proposed order that sets forth appropriate conditions regarding chain of custody and preservation of the evidence.

Respectfully submitted,



ROBERT C. OWEN*
Texas Bar No. 15371950
Owen & Rountree, L.L.P.
P.O. Box 40428
Austin, Texas 78704
Phone: (512) 804-2661
Fax: (512) 804-2685
robowlaw@gmail.com

* Member of the Bar of the N.D. Tex.
(motion to proceed without
designation of local counsel pending)

DOUGLAS G. ROBINSON†
D.C. Bar No. 10850
1440 New York Avenue, N.W.
Washington, DC 20005-2111
Phone: (202) 371-7800
Fax: (202) 371-7168
douglas.robinson@skadden.com

**PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION
& ORDER**

MARIA CRUZ MELENDEZ†
N.Y. Bar No. 4528378
Four Times Square
New York, NY 10036-6522
Phone: (212) 735-2435
Fax: (212) 735-2000
maria.cruzmelendez@skadden.com

† Pending admission *pro hac vice*

Counsel for Plaintiff

Dated: November 30, 2009

**PLAINTIFF'S MOTION FOR
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and clippings taken from Ms. Busby at her autopsy, not identified at trial but believed to be in the possession or under the control of Defendant; (7) all hairs found in the hands of Twila Busby, believed to be in the possession or under the control of Defendant; (8) a sample of the blood of Plaintiff, believed to be in the possession or under the control of Defendant; (9) a sample of the blood of Twila Busby, believed to be in the possession or under the control of Defendant; (10) a sample of the blood of Elwin Caler, believed to be in the possession or under the control of Defendant; and (11) a sample of the blood of Randolph Busby, believed to be in the possession or under the control of Defendant.

2. At the meeting referred to in paragraph 1, the parties shall jointly arrange for the foregoing evidence to be packaged and handled before, during and after the testing process so as to protect the integrity of the evidence and the testing process. Counsel for Plaintiff shall also provide Defendant at said meeting with the name(s) and address(es) of an accredited laboratory or laboratories selected by Plaintiff for forensic DNA testing of the items identified in paragraph 1. Defendant shall then promptly ship such evidence to such laboratory or laboratories as Plaintiff shall select, using the shipping method arranged by Plaintiff at his sole expense. The chain of custody shall be maintained in a manner mutually acceptable to the parties.
3. Plaintiff shall arrange with said laboratory or laboratories for the testing of such items as expeditiously as possible, at Plaintiff's sole expense. Only the minimum amount of material for adequate DNA testing shall be used. Defendant may, at the State's expense, arrange for a scientific expert of her choice to observe said testing and/or perform replicate testing. Plaintiff shall also arrange that the test results be reported simultaneously to Plaintiff and Defendant.
4. If there is a dispute between the parties with respect to any of the matters set forth in this Order, they shall immediately bring the dispute to the attention of the Court for resolution.

United States District Judge

CERTIFICATE OF CONFERENCE

On November 25, 2009, I conferred by telephone with Defendant Lynn Switzer regarding the foregoing Motion for Preliminary Injunction. Ms. Switzer advised Mr. Robinson that, at the present time, she is opposing the motion.

/s Douglas G. Robinson
Douglas G. Robinson

CERTIFICATE OF SERVICE

On November 30, 2009, I electronically submitted the foregoing document to the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s Douglas G. Robinson
Douglas G. Robinson

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